

BEFORE THE UTAH STATE BOARD OF EDUCATION

In the matter of implementing
HB 174 apart from HB 148.

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ORDER

On May 25, 2007, Sheryl L. Allen ("Allen") filed a "Request for Agency Action" (the "Request") with the Utah State Board of Education ("USBOE" or "Board"). On May 29, 2007, Utahns for Public Schools ("UTPS"), Steven R. Mascaro ("Mascaro"), Kory M. Holdaway ("Holdaway"), and Vik Arnold ("Arnold") joined in and added their names as petitioners to this Request (all petitioners hereinafter collectively are referenced as "Petitioners"). Petitioners have requested that the Board enter an emergency order pursuant to Utah Code Annotated, Section 63-46b-20. This order would constitute a ruling (1) that H. B. 174 appears to be incomplete and arguably cannot independently stand when considered alone and apart from H. B. 148, (2) that it is impossible to implement H. B. 174 because there appears to be no funding available for implementation of this legislation and (3) that, in any event, H. B. 174 should not be implemented, as a matter of discretion, on prudential grounds. Notice of a meeting of the Board was given pursuant to the requirements of the Utah Open and Public Meetings Act, Utah Code Annotated, Sections 52-4-1, *et seq.* On May 29, 2007, a hearing was held to consider the Request of Petitioners. At that time, the Office of the Utah State Attorney General and other parties in interest were heard on the matter. The Board deliberated in executive session and then re-opened its meeting to make a decision respecting the Request. The Board voted to rule as follows.

1. The Request of Petitioners is granted. For reasons articulated in the Request, the Board finds and concludes that H. B. 174 is incomplete and cannot independently stand when considered alone and apart from H. B. 148 and that H. B. 174 cannot and should not be implemented independently of H. B. 148.

2. The Board has authority to enter this Order pursuant to Article X, Section 3, of the Utah Constitution, as well as the provisions of the Utah Administrative Procedures Act, Utah Code Annotated, Sections 63-46b-0.5, *et seq.* (hereinafter the "UAPA"), including Section 63-46b-20 of the UAPA. The Board finds that, in view of the confusion and uncertainty surrounding the issue of implementation of H. B. 174 apart from H. B. 148, the needs of parents and children to plan for the upcoming school year, the needs of voters for clarification in terms of the impending referendum, and the exigencies of judicial review in order to resolve these matters, a *bona fide* emergency within the meaning of subpart 20 of the UAPA is present, and that this emergency requires the action taken in this Order by the Board. The Board further finds, in light of its ruling respecting the intent of the Utah legislature, that H. B. 174 was not intended to become law absent coordination and integration with H. B. 148, and that, therefore, no legal rights or interests arise from H. B. 174 independently of H. B. 148, there is no need to invoke Section 63-46b-20(3) of the UAPA, and this Order is the final order of the Board on this matter. The Board has deemed this matter to be a formal adjudicative proceeding for purposes of the judicial review provisions of the UAPA.

3. The Board finds that all Petitioners are interested parties and parties in interest with standing to file and prosecute the Request for purposes of the UAPA.

4. The Board finds that, under the circumstances of this case, all requirements respecting notice to and an opportunity to be heard by all parties in interest were satisfied.

5. The Board has authorized its Chair, Vice-Chair and the Secretary of the Board to execute this Order on behalf of the Board, showing that this Order is the official act of the entire Board.

Dated this 29th day of May, 2007.

Chair

Vice-Chair

Secretary